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NO. 21 1947

# Supreme Court of the United States

THE TEXAS AND PACIFIC RAILWAY COMPANY, et al.,  
*Petitioners,*

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,  
*Respondents.*

REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT IN CAUSE NO. 11663, ENTITLED "BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., APPELLANTS, VERSUS TEXAS & PACIFIC RAILWAY COMPANY, ET AL., APPELLEES".

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No. 136

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In the  
**Supreme Court of the United States**

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THE TEXAS AND PACIFIC RAILWAY COMPANY, *et al.*,  
*Petitioners,*

*v.*

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,  
*Respondents.*

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*To the Honorable, the Supreme Court of the United States:*

Petitioners file this reply brief under the provisions of paragraph 4 (a) of Rule 38.

Respondents' additional statement of facts merely re-emphasizes the need for a declaratory judgment in this case. It reflects the underlying controversy between the officers of the Brotherhood of Railroad Trainmen and the individual members of the Brotherhood concerning the authority of those officers to negotiate the proposed contract

with the railroad companies. The order of the Board of Appeals of the Brotherhood, quoted by Respondents (page 3), is the very order which the individual defendants contend, and the District Court found (R. 332, 335, 337, 338), was a nullity because the Board of Appeals was without jurisdiction. Consequently, the District Court found that the officers of the Brotherhood were acting "contrary to and in violation of the constitution and by-laws of said Brotherhood" (R. 340), and the District Court therefore decreed that the railroad companies, under such circumstances, are not required by law to confer, negotiate, bargain or treat with the officers of the Brotherhood concerning their desire to amend or interpret the contract of June 2, 1927 (R. 340).

Respondents admit (page 4) that the individual defendants threatened to sue the railroad companies for damages if they changed the contract of June 2, 1927, as desired by the officers of the Brotherhood purporting to act under the void order of its Board of Appeals. This was after institution of the Bujol suit (Exhibit D to Complaint, R. 24-44) which put the railroad companies on notice of the contention of the individual defendants, later sustained by the District Court (R. 332, 335, 337, 338, 340), that the officers of the Brotherhood were attempting to change the contract in violation of its constitution and by-laws. Respondents also admit their continued demands upon the railroad companies that the contract of June 2, 1927, be changed (page 3), notwithstanding the alleged violation of the constitution and by-laws of the Brotherhood, and Respondents admit their repeated assertion that the railroad

companies, on pain of "rather severe penalties" (page 20), are compelled by the Railway Labor Act to negotiate the desired changes (pages 6, 20) regardless of the claim of the individual defendants that the officers of the Brotherhood are proceeding in violation of its constitution and by-laws.

Placed in this position of "peril and insecurity" against which the Declaratory Judgment Act was intended to "afford relief", *Altvater v. Freeman*, 319 U. S. 359, 365, the railroad companies sought a judgment declaring the respective rights, obligations, and legal relations of the parties.

The railroad petitioners have nothing to gain either by changing or by not changing the contract of June 2, 1927, because, as stated by the District Court, "the aggregate wages to be paid will be the same" (R. 81). They are vitally interested, however, in procuring a judgment which will (1) declare the respective rights, obligations, and legal relations of the parties, (2) protect the railroad companies from penalty suits and from damage suits by the respective groups of defendants, and (3) answer the following questions presented by the record in this case:

1. Are officers of a labor union, a bargaining agent under the Railway Labor Act, required to comply with the union's constitution and by-laws as a condition precedent to their right under the Act to negotiate contracts with a railroad company?

2. Is a railroad company required by the Railway Labor Act to confer, negotiate, bargain or treat with, and if pos-

sible to reach an agreement with, officers of a labor union, a bargaining agent under the Act, after being notified by employees who would be injuriously affected that the officers of the union are proceeding in violation of its constitution and by-laws and that such employees will sue the railroad company for damages should such agreement be made?

3. Does the Railway Labor Act require a railroad company to confer, negotiate, bargain or treat with, and if possible to reach an agreement with, officers of a labor union, a bargaining agent under the Act, after a District Court of the United States has found that such officers are proceeding in violation of the union's constitution and by-laws and that employees who would be injuriously affected have been denied a right under the union's constitution?

4. If the answer to question 2 or 3 is "Yes", does the railroad company become liable in damages to its employees who are injured by such conferring, negotiating, bargaining, treating, and the agreement resulting therefrom?

5. If the answer to question 2 or 3 is "No", is the railroad company subject to any penalty under the Railway Labor Act, and is it liable in damages to the labor union or to any person represented by it, or to any employee who might be injured by the failure or refusal of the railroad company to confer, negotiate, bargain or treat with, and if possible to reach an agreement with, the officers of the labor union?

Manifestly, these are important questions "affecting the application and operation" of the Railway Labor Act, which should be resolved by this Court, *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, 713, and they are questions "of importance in the orderly administration of the Railway Labor Act", *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al.*, 15 Law Week 4146, 4147, decided by this Court on January 13, 1947; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210; *Steele v. Louisville & N. R. Co., et al.*, 323 U. S. 192, 194.

The Circuit Court would have answered these questions had it written into a judgment what it thus declared:

"The carriers are under a statutory duty to negotiate with the Brotherhood. Neither negotiation nor an agreement with them can therefore make the carriers liable" (R. 359).

But the Circuit Court refused to state these legal conclusions in a declaratory judgment because it erroneously concluded (R. 355, 356) that it was compelled to dismiss the complaint upon what it conceived to be the "controlling authorities" (R. 358) cited by Respondents, to-wit: *Brotherhood of Locomotive Engineers v. M.-K.-T. R. Co.*, 320 U. S. 323; *Switchmen's Union v. National Mediation*, 320 U. S. 297; *Brotherhood of Railroad Trainmen v. Toledo*, 321 U. S. 50; and the decision of the Circuit Court in *Bradley Lumber Co. v. N. L. R. B.*, 84 Fed. (2d) 97 (R. 353-354).

As we have heretofore shown, those cases do not support the dismissal order (Brief in support of petition, pages 30-31).

In *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co.*, 321 U. S. 50, this Court held that the federal courts could not enjoin strike violence on the Toledo, Peoria & Western Railroad because that company had refused to arbitrate disputes relating to rates of pay and working conditions, as provided in the Railway Labor Act. In *Bradley Lumber Co. v. National Labor Relations Board*, 84 Fed. (2d) 97, the Circuit Court held that a federal court could not enjoin the taking of testimony by a Regional Director for the National Labor Relations Board, and that the Declaratory Judgment Act conferred no greater power "to stop or interfere with administrative proceedings" or extend equity jurisdiction to "controversies which have not yet reached the judicial stage." No such issues are involved in the instant case. Here, the questions at issue are the authority of the bargaining agent and the liability, if any, of the railroad companies resulting from their agreements with that agent. Furthermore, this case is in furtherance of, instead of an interference with, administrative proceedings because the Court in this case can chart a course which will remove confusion, doubt, uncertainty and delay in the orderly administration of the Railway Labor Act.

This is not the first time that litigants have urged, as in this case, a warped interpretation and an abortive application of the decisions of this Court in *Brotherhood of Locomotive Engineers v. M.-K.-T. R. Co.*, 320 U. S. 323, and *Switchmen's Union v. National Mediation*, 320 U. S. 297, in an effort to avoid access to and a decision by the courts of the land. It was attempted, but rejected by this Court, in *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 204-205;

*Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210, 213; and *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al.*, 15 Law Week 4146, 4147. In those cases this Court made it plain that the *M.-K.-T.* and *Switchmen's Union* decisions must be limited to cases involving "a jurisdictional dispute, determinable under the administrative scheme set up by the (Railway Labor) Act \* \* \* or restricted by the Act to voluntary settlement by recourse to the traditional implements of mediation, conciliation and arbitration", to questions of "who is entitled to represent the craft, or who are members of it, issues which have been relegated for settlement to the Mediation Board", to "differences as to the interpretation of the contract which by the Act are committed to the jurisdiction of the Railroad Adjustment Board", *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 204-205; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210, 213; and to "an administrative determination which Congress has made final and beyond the realm of judicial scrutiny", *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al.*, 15 Law Week 4146, 4147. The reasons for this, and the utter inapplicability of the *M.-K.-T.* and *Switchmen's Union* decisions to the case at bar, are perfectly apparent from this Court's statements of the issues involved in those cases, to-wit:

*Brotherhood of Locomotive Engineers v. M.-K.-T. R. Co.*, 320 U. S. 323:

"This case involves a dispute under the Railway Labor Act concerning the authority of two railroad

Brotherhoods to represent certain employees in collective bargaining with the defendant-carriers. The petitioner (hereinafter called the Engineers) is a committee of the Brotherhood of Locomotive Engineers which has been and is the duly designated bargaining representative for the craft of engineers employed by the carriers. The third-party defendant (hereinafter called the Firemen) is a committee of the Brotherhood of Locomotive Firemen and Enginemen which has been and is the duly designated bargaining representative for the craft of firemen on the same lines. Each craft has long had an agreement with the carriers concerning rules, rates of pay, and working conditions. The agreement with the Engineers states that the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers is vested in that committee. The agreement with the Firemen contains a similar provision concerning members of that craft. Both agreements also contain rules governing the demotion of engineers to be firemen, the promotion of firemen to be engineers, and return of demoted engineers to their former work. For many years the two Brotherhoods had an agreement which established rules and regulations on these subjects and which provided machinery for resolving disputes which might arise between them. This agreement was cancelled in 1927. The present dispute arose since that time and relates to the calling of engineers for emergency service. In general the Engineers and the carriers had a working arrangement providing (1) that, excepting Smithville, Texas, the senior available demoted engineer whose home terminal was at the place where the service was required or the man assigned to the particular run as fireman, if he had greater seniority as engineer, would be chosen when it was necessary to call an engineer for emergency service; (2) that the regulation of the engineers' working lists was to be handled by the Engineers' local chairman, not by the management; and (3) that at Smithville, emergency work would be performed by advancing the assign-

ment of engineers in the so-called 'pool', instead of calling in emergency engineers. These arrangements were not satisfactory to the Firemen. After protest to the carriers and after a failure of the Brotherhoods to resolve their dispute the matter was submitted to the National Mediation Board for mediation. The Engineers did not participate. The Firemen and the carriers entered into the Mediation Agreement of December 12, 1940, the validity of which is here challenged. The effect of that agreement was in general to eliminate the preference previously given to engineers of the home terminal and the special arrangement at Smithville in favor of the pool engineers. It also changed the practice respecting the handling of the engineers' working lists—thereafter the assignments would be handled by the management assisted by the local chairmen of the two groups. After making the agreement the carriers gave notice to the Engineers that they were cancelling previous arrangements with that Brotherhood.

"The Engineers then brought this action for a declaratory judgment (48 Stat. 955, 28 U. S. C. sec. 400) that the agreement of December 12, 1940, was in violation of the Railway Labor Act (44 Stat. 577, 48 Stat. 1185, 45 U. S. C. sec. 151) and that the Engineers should be declared to be the sole representative of the locomotive engineers with the exclusive right to bargain for them" (pages 325-327).

"It is true that the present controversy grows out of an application of the principles of collective bargaining and majority rule. It involves a jurisdictional dispute—an asserted overlapping of the interests of two crafts. It necessitates a determination of the point where the authority of one craft ends and the other begins or of the zones where they have joint authority" (pages 334-335).

*"It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts"* (our italics) (page 336).

*Switchmen's Union v. National Mediation, 320 U. S. 297:*

"This is an action by the petitioners, the Switchmen's Union of North America and some of its members against the National Mediation Board its members, the Brotherhood of Railroad Trainmen, and the New York Central Railroad Company and the Michigan Central Railroad Company. The individual plaintiffs are members and officials of the Switchmen's Union and employees of the respondent carriers.

"Petitioners were plaintiffs in the District Court. A certification of representatives for collective bargaining under Sec. 2, Ninth of the Railway Labor Act (44 Stat. 577, 48 Stat. 1185) was made by the Board to the carriers. This certification followed the invocation of the services of the Board to investigate a dispute among the yardmen as to their representative. The Brotherhood sought to be the representative for all the yardmen of the rail lines operated by the New York Central system. The Switchmen contended that yardmen of certain designated parts of the system should be permitted to vote for separate representatives instead of being compelled to take part in a system-wide election.

"The Board designated all yardmen of the carriers as participants in the election. The election was held and the Brotherhood was chosen as the representative. Upon the certification of the result to the carriers, petitioners sought to have the determination by the Board of the participants and the certification of the representatives cancelled. This suit for cancellation was brought in the District Court" (pages 298-299).

"The Act in Sec. 2, Fourth writes into law the 'right' of the 'majority of any craft or class of employees' to 'determine who shall be the representative of the craft or class for the purpose of this Act'. That 'right' is protected by Sec. 2, Ninth which gives the Mediation Board the power to resolve controversies concerning it and as an incident thereto to determine what is the

appropriate craft or class in which the election should be held" (pages 300-301).

*"We do not reach the merits of the controversy. For we are of the opinion that the District Court did not have the power to review the action of the National Mediation Board in issuing the certificate"* (our italics) (page 300).

It is clear from the above quotations that the *M.-K.-T.* and *Switchmen's Union* decisions cannot possibly control the disposition of this case in which the questions at issue are the authority of the bargaining agent and the liability, if any, of the railroad companies resulting from their agreements with that agent. On the contrary, as this Court said in *The Order of Railway Conductors of America, et al. v. O. E. Swan, et al.*, 15 Law Week 4146, "at the out-start it is important to note that judicial review of this matter is not precluded by the principles set forth" in the *M.-K.-T.* and *Switchmen's Union* cases; "we are dealing here with something quite different from an administrative determination which Congress has made final and beyond the realm of judicial scrutiny"; "the issue is primarily one of statutory interpretation"; "the problem thus is to determine what Congress meant" (page 4147). Only the Courts can make this determination, *Bank of Hamilton v. Dudley*, 2 Peters 317, 336, 27 U. S. 492, 524; *Elmendorf v. Taylor*, 10 Wheaton 67, 70, 23 U. S. 152, 159; *United States v. American Trucking Ass'ns*, 310 U. S. 534, 544. The Railway Labor Act does not authorize the National Railroad Adjustment Board, or the National Mediation Board, or any other administrative agency, to pass upon these questions, or to bind the parties if they did (Brief in support of petition, pages 31-32).

The authority of the bargaining agent was at issue in *Steele v. Louisville & N. R. Co., et al.*, 323 U. S. 192; *Tunstall v. Brotherhood of Locomotive Firemen and Engineers*, 323 U. S. 210; and *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, in each of which cases this Court granted certiorari.

In the *Steele case*, the Supreme Court of Alabama held that a railroad company was required to make the agreement there under attack because the Railway Labor Act "places a mandatory duty on the Railroad to treat with the Brotherhood as the exclusive representative of the employees in a craft" and "imposes heavy criminal penalties for willful failure to comply with its command" (323 U. S. 197). Disagreeing, this Court recognized that the Act creates "the relationship of principal and agent between the members of the craft and the Brotherhood" (323 U. S. 198), and invalidated the agreement because the Brotherhood, in violation of its statutory duty, had contracted against a minority whom it was required to represent (323 U. S. 198-203). The *Tunstall case* is to the same effect (323 U. S. 211-212).

In the *Burley case*, certain employees of the Elgin, J. & E. Ry. Co., among other things, challenged the authority of a union representative under the Railway Labor Act, and its officers, to release their individual claims or to submit them to the National Railroad Adjustment Board (325 U. S. 718). As stated by this Court:

"They relied upon provisions of the Brotherhood's constitution and rules, of which the carrier was alleged to have knowledge, as forbidding union officials to

release individual claims or to submit them to the Board 'without specific authority to do so granted by the individual members themselves'; and denied that such authority in either respect had been given" (325 U. S. 718).

Holding that "the collective agent's power to act in the various stages of the statutory procedures is part of those procedures and necessarily is related to them in function, scope and purpose" (325 U. S. 728), this Court remanded the cause for a determination of the "crucial issue" of whether the employees "had authorized the Brotherhood in any legally sufficient manner to represent them" (325 U. S. 748). On rehearing, this Court adhered to its former decision and reemphasized the right of the complaining employees to challenge the lack of authority of the bargaining agent in the courts—"the forum where such issues properly are triable" (327 U. S. 667).

It is clear from the foregoing authorities that a justiciable and an actual controversy exists between the railroad companies and the Brotherhood of Railroad Trainmen and its Rapides Lodge No. 856; that a justiciable and an actual controversy exists between the railroad companies and the individual defendants; and that the railroad companies are entitled to a declaratory judgment removing them from their present position of "peril and insecurity", as contemplated by the Declaratory Judgment Act, *Altwater v. Freeman*, 319 U. S. 359, 365.

Furthermore, it is now a matter of common knowledge that this case, like the *Steele*, *Tunstall* and *Burley* cases, is only one of many instances in which employees on nu-

merous railroads are challenging the right of officers of labor unions, accredited representatives under the Railway Labor Act, to make, amend or terminate contracts with railroad companies on the ground that such officers are acting in violation of the unions' constitutions and by-laws. In many instances, such as this, those employees are threatening damage suits against the railroad companies if they make, amend or terminate such contracts as requested by the officers of the unions. On the other hand, the union officers are insisting, as in this case, that the railroad companies are required by the Railway Labor Act to confer, negotiate, bargain or treat with them, and if possible reach an agreement, notwithstanding such charges by the individual members of the unions, or suffer penalties for their willful failure so to do. This creates confusion, doubt, uncertainty and delay in the orderly administration of the Railway Labor Act and places the railroad companies in positions of peril and insecurity. A writ of certiorari should be granted in this case so that this Court may declare the respective rights, obligations, and legal relations of the parties in respect to these matters and forever set such questions at rest.

WHEREFORE, petitioners pray, as in their petition and original brief, that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record and proceedings of said Circuit Court in the case on its docket numbered 11663, entitled "Brotherhood of Railroad Trainmen, et al., Appellants,

versus Texas & Pacific Railway Company, et al., Appellees", to the end that said cause may be reviewed and determined by this Court as provided by the Statutes of the United States; that the judgment of said Circuit Court be reversed; and for such other and further relief as this Court may deem proper.

Dated July 16, 1947.

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